

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
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Rockville, Maryland 20850

www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. S-2824

PETITION OF BRIAN A. AND ELLEN L. KADOW

OPINION OF THE BOARD

(Opinion adopted September 12, 2012)

(Effective Date of Opinion: September 20, 2012)

Case No. S-2824 is an application for a special exception, under Section 59-G-2.00 of the Zoning Ordinance, to permit an accessory apartment. The Hearing Examiner for Montgomery County held a hearing on the application on February 2, 2012 and held the record in the case open so that the Applicants could obtain a variance needed before the special exception could be approved. The variance, Case No. A-6382, was approved in an opinion dated July 13, 2012, and on July 24, 2012, the Hearing Examiner issued a Report and Recommendation for approval of the special exception.

The subject property is Lot 2, Block 4, located at 3603 Thornapple Street, Chevy Chase, Maryland 20815, in the R-60 Zone.

Decision of the Board: Special Exception **Granted** Subject to
the Conditions Enumerated Below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on September 12, 2012. After careful consideration and review of the record, the Board adopts the Report and Recommendation and grants the special exception subject to the following conditions:

1. The Petitioners are bound by their testimony, representations and exhibits of record, to the extent that such testimony and evidence are identified in the Hearing Examiner's Report and in this opinion;

2. The Petitioners must comply with the conditions set forth in the Memorandum of Cynthia Caudillo, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 17(a)):

- a. The plans submitted by the owner reference modifications must meet Housing Code requirements. The plans submitted for the proposed unit must include modifications to the center of the wall.
- b. Doors must be installed that provide complete separation for both units.
- c. Owner must obtain all proper permits for construction and modifications from Montgomery County and Section 5 of the Village of Chevy Chase.
- d. Must install a window in the bedroom that is at least (5.7) square feet in clear opening and must be able to open without the use of a tool with a minimum net clear height of twenty-four (24) inches and a net clear opening of twenty (20) inches with the bottom of the opening not more than forty-four (44) inches above the floor (a window that opens down or otherwise blocks a way out is unacceptable). The minimum horizontal area of the window well shall be 9 square feet, with a minimum horizontal projection and width of 36 inches. The area of the window well shall allow the emergency escape and rescue opening to be fully opened. Window wells with a vertical depth greater than 44 inches shall be equipped with a permanently affixed ladder or steps. (permit may be required)
- e. Based on the proposed Accessory Apartment plans the door that leads to the unit located between the HVAC and laundry area must be an egress door. This door must be no less than 3 feet in width and 6 feet 8 inches in height and must be fire rated to meet the IRC requirements.
- f. Owner must contact the Department of Permitting Services to verify that hard wired smoke detectors are installed in accordance with current requirements for proposed Accessory Apartment.
- g. Must investigate and correct the cause of the mold and mildew on the ceiling (around light fixture) in the living room- mold and mildew must be eradicated from the area (restore surface finishes as needed).
- h. Total habitable space measures approximately 473.47 square feet (proposed kitchen area not included). Two (2) occupants may reside in the unit if the window in the bedroom meets Housing Code compliance.

3. Petitioners must comply with the determination of the Housing Code Inspector as to limits on occupancy in the accessory apartment and must comply with any other directions of the Housing Code Inspector to ensure safe and code-compliant occupancy;

4. Petitioners must occupy one of the dwelling units on the lot on which the accessory apartment is located;
5. The accessory apartment must not be located on a lot that is occupied by a family of unrelated persons, or where there is a guest room for rent, a boardinghouse or a registered living unit;
6. Petitioners must not receive compensation for the occupancy of more than one dwelling unit; and
7. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

On a motion by Carolyn J. Shawaker, seconded by Stanley B. Boyd, with David K. Perdue, Vice-Chair and Catherine G. Titus, Chair, in agreement and Walter S. Booth necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 20th day of September 2012.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.